

2004 NATIONAL FAIR HOUSING TRAINING CONFERENCE AND PSYCHOLOGICAL IMPACT OF RACIAL DISCRIMINATION

It is a pleasure and honor for me to be on this panel this morning and I wish to thank Marilyn Brown and the organizers of the conference. It was about 1991 or 1992 that Marilyn Brown first called my attention to and initiated my interest in the subject of the psychological impact of racial discrimination in housing situations. About that time my practice in clinical diagnostic psychology was becoming more and more focused on the sub-speciality of forensic psychology, that is, assessment of mental health conditions and issues as they interface with specific legal issues. These interfaces occur in nearly all types of legal proceedings, for example, criminal hearings and trials, civil and corporate litigation, custody evaluations and even psycho-educational evaluations. Among the issues in civil litigation in which I was serving as a consultant and sometimes expert witness were cases involving sexual harassment in the work place as well as incidents involving age discrimination, gender discrimination and ethnic discrimination in labor practices. The common denominator is, of course, discrimination, and its impact on the self esteem and the psychological and emotional reactions of the recipients or victims of discriminatory practices, policies, incidents and insults. At that time there was little, if any, literature in psychological or sociological journals on the specific subject of the emotional impact of housing discrimination, but there was some literature on the general effects of discrimination available such as Gordon Allport's publication, *On the Nature*

of Prejudice. Over the past two decades, however, there have been increasing numbers of legal, social and cultural articles reviewing the issue of humiliation and psychological effects caused by housing discrimination.

This morning I would like to cover three points or aspects of the problem of psychological harm experienced by victims of housing discrimination. The first point is that the Courts do, in fact, recognize, consider and compensate mental anguish and humiliation suffered by victims of housing discrimination. This is evidenced in the damage awards granted. The second and most important point in relation to this morning's discussion are the difficulties encountered in identifying and exploring humiliation, mental anguish and emotional reactions in your clients and how to present these issues to the Court. The third area which I will briefly touch upon is the use and misuse of professionals as expert witnesses throughout the litigation process. Because it would be impossible to adequately cover these subjects in the limited time here today, I have prepared a number of references for those of you who may wish to explore these issues more in depth. I believe the 2003 article by Victor Goode and Conrad Johnson in the *Fordham Urban Law Journal* is probably the most comprehensive and thorough analysis of the problem that I have read to date.

I. In early fair housing cases such as *Seaton vs. Sky Realty* and *Phiffer vs. Proud Parent Hotel* the Court awarded damages specifically for “humiliation” and “embarrassment” suffered

by the plaintiffs, but often the awarded damages were relatively small amounts. More recently, damage amounts have been more substantial due to such factors as a) identified severe emotional distress on the part of the victim b) reckless or intentional conduct by the defendant or c) circumstances that may be considered extreme and outrageous. However, we know that despite the progress in the area of fair housing practices that has been made over the past thirty years, housing discrimination continues to thrive in many urban and suburban areas throughout the United States, even if the landlords and Realtors have become more subtle and sophisticated in continuing practices of red lining and in keeping minorities out of their buildings and neighborhoods. As late as 1989 a Housing Discrimination Study determined that was likely that more than 50 % of African American and Latino applicants would experience one or more incidents of discrimination while looking for a home. In addition, in the journal article I mentioned previously by Goode and Johnson in the *Fordham Urban Law Journal*, the authors discuss at length other reasons why damage awards may be ignored or kept to minimal amounts, such as cultural attitudes which keep judges and juries uniformed, insensitive and ignorant of the emotional hurt and embarrassment caused by discriminatory behaviors. The authors also discuss possible unconscious bias and insensitivity in some judges. On an anecdotal level, Marilyn Brown told me that recently a judge commented to her “shouldn’t you be used to this by now?”.

II. In my article in 1992 in *The John Marshall Law Review*, I discussed some difficulties in teasing out and identifying emotional distress, humiliation, and mental anguish in clients who approach attorneys with facts and narratives of a discriminatory incident which supports legal action. While the presenting emotions of the client may be justifiable anger and a sense of injustice, there are more subtle emotional reactions, those which psychiatrists and psychologists refer to as softer or more vulnerable feelings, which clients are often reluctant to bring up or, in fact, are unable to recognize and discuss. Certainly, any act of experienced discrimination is an act which is described as an assault on the person, therefore an personal affront which may induce feelings of humiliation and inferiority as well as resentment and anger. Such discriminatory incidents qualify for what psychiatrists and psychologists would identify as a situational stressor which is likely to induce emotional and behavioral reactions. There are lists of symptoms and reactions to such a stressor which should be reviewed and explored by the attorney and possibly by a professional consultant once a comfortable relationship has been established with the client. In general, people are not going to disclose their more sensitive feelings for a variety of reasons including the fact they might not wish to appear as emotionally vulnerable individuals. The attorney should listen for emotional and behavioral clues in the client's narrative, especially during the client's first days and nights after the incident. Red flags would go up if the client mentions episodes of crying or tearfulness, sleep disturbances, difficulty in concentrating, feelings or behaviors of wanting to avoid or withdraw from others, feelings of humiliation and a temporary loss of self-esteem. The lists of typical psychological

and emotional symptoms can be found not only in books on psychiatry and psychology under the heading of “adjustment reactions”, but such lists are also included in legal writings and publications, for example, in the proceedings of the 1980 *Kentucky Commission on Human Rights, Damages for Embarrassment and Humiliation in Discrimination Cases* and in the article by Goode and Johnson which I already noted.

If you review case law, there are case examples of individuals, including professionals who, after having experienced discrimination in attempting to rent or buy in an attractive location, reported deep feelings of hurt, embarrassment, disturbances in sleeping and avoidant reactions. They sometimes shared these feelings only reluctantly or with the help of a professional counselor. On rare occasions, a formal forensic diagnostic assessment might be advisable, especially if there are other mental health issues in the client’s background and history. In most cases, however, it is the plaintiff, with proper preparation, who is the one most likely to be most effective in presenting to the Court his or her personal emotional hurt to the discrimination incident. The client’s accounts, however, may be bolstered by the testimony of family or friends who witnessed the victim’s reaction or listened to verbalized expressions of disappointment, frustration, and humiliation. It is also important to remember that everyone is different and the personal response to discrimination will also differ significantly from one victim to the next. Some individuals are more in touch with their feelings and can more readily express what they experienced. Many others, however, tend to suppress or not want to deal

with these experiences of humiliation, loss of self-esteem, mild depression or feelings of inadequacy.

III Finally, in all honesty, I did not come here to advocate for the use of psychiatrists and psychologists as expert witnesses in hearings or trials in housing discrimination litigation. Even though my present practice consists mainly of forensic assessment, consultation and expert witness services, I have serious reservations about the place of mental health professionals in certain formal legal proceedings. Sometimes the testimony of an Expert Witness can backfire or not really strengthen an argument for punitive damages. Expert Witnesses are often seen as biased towards plaintiffs or defendants or if the opinions proffered have served both sides, then they are simply perceived as high paid hired guns. Frankly, I am most comfortable in the role of an Expert Witness when appointed by the Court and therefore not directly retained by either party such as appointments as a 604(b) custody evaluator. However, I believe in fair housing cases, it may be useful to seek services of mental health or social scientist professionals in two ways. One area would be using a qualified and experienced psychiatrist or psychologist as a consultant to explore the feelings of loss of self esteem, humiliation, embarrassment of the victim as well as to strategize with the attorney in preparing salient questions for direct examination of the plaintiff as well as preparation for aggressive cross examination questions from both sides. A second possible use of professionals would be to disclose a social scientist as an expert witness. Specifically, this would be particularly useful when there is concern that

the Judge or members of the Jury may be naive relative to issues of the emotional impact of discrimination. There is now a significant body of published social and psycho-social research available which may be instructive and useful for a judge or jury under particular circumstances.

Again I wish to express my appreciation in being part of this panel and I have left some time for questions or general discussion. Thank you.

Emotional Harm in Discrimination Cases: A New Look at a Lingering Problem Journal article by Victor M. Goode, Conrad A. Johnson; *Fordham Urban Law Journal*, Vol. 30, 2003.

The Mental Anguish and Humiliation Suffered by Victims of Housing Discrimination Journal article by Larry Heinrich; *John Marshall Law Review*, Vol. 26, 1992.

Race, Class, and Neighborhood: Differences in the Residential Return on Individual Resources Journal article by Wayne J. Villemmez; *Social Forces*, Vol. 59, 1980.

Poverty, Housing Niches and Health in the United States Journal article by Susan Saegert, Gary W. Evans; *Journal of Social Issues*, Vol. 59, 2003.

Proceedings of the 1980 Kentucky Commission on Human Rights: Damages for Embarrassment and Humiliation in Discrimination Cases.

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